DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200150031

Date: AUG -9 2001

Contact Person:

Identification Number:

Telephone Number:

SIN: 507.00-00
4941.00-00
4944.00-00
4945.00-00

T:EO:B3

Employer Identification Number:

Legend:

A =
B =
C =
D =
X =
Y =

Dear Sir or Madam:

We have considered A's and B's ruling requests, dated November 14, 2000, as supplemented by subsequent correspondence, wherein they requested certain rulings concerning the federal tax consequences of the proposed transaction described below.

A is a not-for-profit organization formed under the law of the state of X and operates exclusively for charitable, educational, scientific and religious purposes. A is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code (Code) and is classified as a private foundation within the meaning section 509(a) of the Code. B is a not-for-profit organization formed under the law of the state of Y and operates exclusively for charitable, educational, scientific and religious purposes. B is exempt from federal income tax under section 501(c)(3) of the Code and is classified as a private foundation within the meaning of section 509(a). Both A and B have been entirely funded and are controlled by C and D. The information in the articles of incorporation and articles of merger of both private foundations indicate that C and D comprise the majority of the board members of A and B. C and D effectively control A and B.

B represents that it desires to relocate to the state of X in order to facilitate the conduct of charitable activities. A was formed for the purpose of continuing B's exempt activities. B represents that it will transfer its assets and merge into A, which will be the surviving corporation.

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A makes the following representations. It has no expenditure responsibility grants outstanding under section 4945(h) of the Code. It possesses all of the same attributes and characteristics of B. Both A and B represent that upon merger, the title of all real estate and other property or any interest therein will be vested with A without reversion or impairment. Both private foundations represent that after the merger A shall be responsible for all liabilities and obligations of B. B represents that upon merger and transfer of the assets to A, it will voluntarily terminate its private foundation status by giving notice to the Service as described under section 507(a)(1) of the Code and by filing a certificate of merger with the appropriate state agency.

Law:

Section 507(a)(1) of the Code provides that, except as provided in section 507(b), the status of any organization as a private foundation shall be terminated only if it notifies the Secretary of its intent to accomplish termination.

Section 507(b)(2) of the Code provides that in the case of a transfer of assets of any private foundation to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization, the transferee foundation shall not be treated as a newly created organization.

Section 507(c) of the Code imposes a tax on each organization that terminates its private foundation status under section 507(a).

Section 1.507-1(b)(6) of the Income Tax Regulations (regulations) provides that if a private foundation transfers all or part of its assets to one or more other private foundations pursuant to a transfer described in section 507(b)(2) of the Code, such transferor foundation will not have terminated its private foundation status under section 507(a)(1)

Section 1.507-1(b)(9) of the regulations provides that a private foundation that transfers all of its net assets is required to file the annual information return required by section 6033, and the foundation managers are required to file the annual report of a private foundation required by section 6056, for the taxable year in which such transfer occurs. However, neither such foundation nor its foundation managers will be required to file such returns for any taxable years in question the foundation has neither legal or equitable title to any assets or engages in any activity.

Section 1.507-3(a)(1) of the regulations provides that in the case of a significant disposition of assets to one or more private foundations within the meaning of paragraph (c) of this section, the transferee organization shall not be treated as a newly created organization. A transferee organization to which this paragraph applies shall be treated as possessing those attributes and characteristics of the transferor organization which are described in subparagraphs (2), (3), and (4) of this paragraph.

Section 1.507-3(a)(2)(i) of the regulations provides, in relevant part, that a transferee organization to which this paragraph applies shall succeed to the aggregate tax benefit of the transferor organization in an amount determined as follows: Such

amount shall be an amount equal to the amount of such aggregate tax benefit multiplied by a fraction the numerator of which is the fair market value of the assets (less encumbrances) transferred to such transferee and the denominator of which is the fair market value of the assets of the transferor (less encumbrances) immediately before the transfer. Fair market value shall be determined as of the time of transfer.

Section 1.507-3(a)(3) of the regulations provides, in relevant part, that for purposes of section 507(d)(2), in the event of a transfer of assets described in section 507(b)(2), any person who is a substantial contributor (within the meaning of section 507(b)(2)) with respect to the transferor foundation shall be treated as a substantial contributor with respect to the transferee foundation, regardless of whether such person meets the $5,000-two percent test with respect to the transferee organization at any time.

Section 1.507-3(a)(4) of the regulations provides that if a private foundation incurs liability for one or more of the taxes imposed under Chapter 42 (or any penalty resulting therefrom) prior to, or as a result of, making a transfer of assets described in section 507(b)(2) to one or more private foundations, in any case where transferee liability applies, each transferee foundation shall be treated as receiving the transferred assets subject to such liability to the extent that the transferor foundation does not satisfy such liability.

Section 1.507-3(a)(7) of the regulations provides, in relevant part, that where the transferor has disposed of all of its assets, during any period in which the transferor has no assets, section 4945(d)(4) and (h) shall not apply to the transferee or the transferor with respect to any expenditure responsibility grants made by the transferor.

Section 1.507-3(a)(9)(i) of the regulations provides, in relevant part, that if a private foundation transfers all of its net assets to one or more private foundations which are effectively controlled (within the meaning of section 1.482-1(a)(3)), directly or indirectly, by the same person or persons which effectively controlled the transferor private foundation, for purposes of chapter 42 and part II of subchapter F of chapter 1 of the Code (sections 507 through 509) such a transferee private foundation shall be treated as if it were the transferor.

Section 1.507-3(c) of the regulations provides that a transfer under section 507(b)(2) of the Code includes a transfer of assets from one private foundation to one or more private foundations pursuant to any reorganization, partial liquidation, or any other significant disposition of assets. The term "significant disposition" includes any disposition of 25 percent or more of the transferor private foundation's assets.

Section 1.507-3(d) of the regulations provides that unless a private foundation voluntarily gives notice pursuant to section 507(a)(1), a transfer of assets described in section 507(b)(2) will not constitute a termination of the transferor's private foundation status under section 507(a)(1). Such transfer must, nevertheless, satisfy the requirements of any pertinent provisions of Chapter 42.

Section 1.507-4(b) of the regulations provides that private foundations that make transfers described in section 507(b)(2) are not subject to the tax imposed under

section 507(c) with respect to such transfers unless the provisions of section 507(a) become applicable.

Section 4940(a) of the Code imposes on a private foundation with respect to the carrying on of its activities, a tax equal to 2 percent of its net investment income for the taxable year.

Section 4940(c)(4)(A) provides, in relevant part, that in determining capital gain net income, there shall be taken into account only gains and losses from the sale or other disposition of property used for the production of interest, dividends, rents, and royalties.

Section 4941(a) of the Code imposes a tax on each act of self-dealing between a disqualified person and a private foundation.

Section 4944(a) of the Code imposes a tax on any amount invested by a private foundation in a manner that jeopardizes the carrying out of any of its exempt purposes.

Section 4945 of the Code imposes a tax on any taxable expenditure made by a private foundation as defined, in pertinent part, by section 4945(d)(4).

Section 4945(d)(4) of the Code provides that the term "taxable expenditure" means any amount paid or incurred by a private foundation as a grant to another organization unless –

(A) such organization is described in paragraph (1), (2), or (3) of section 509(a) or is an exempt operating foundation (as defined in section 4940(d)(2)), or

(B) the private foundation exercises expenditure responsibility with respect to such grant in accordance with section 4945(h).

Section 4945(h) of the Code provides that the expenditure responsibility referred to in subsection (d)(4) means that the private foundation is responsible to exert all reasonable efforts and to establish adequate procedures –

(1) to see that the grant is spent solely for the purpose for which made,

(2) to obtain full and complete reports from the grantee on how the funds are spent, and

(3) to make full and detailed reports with respect to such expenditures to the Secretary.

Section 53.4945-5(a) of the Foundation and Similar Excise Taxes Regulations (regulations) provides, in pertinent part, that the term "taxable expenditure" includes any amount paid or incurred by a private foundation as a grant to an organization (other than an organization described in section 509(a)(1), (2) or (3)), unless the private foundation exercises expenditure responsibility with respect to such grant in accordance with section 4945(h).

Section 53.4945-5(b)(3) of the regulations concerns the terms of grants. The regulation provides that, in order to exercise expenditure responsibility, the grantor private foundation must require that the grant be subject to a written commitment signed by an appropriate officer, director, or trustee of the grantee, including the grantee's agreement to repay any portion of the grant which is not used for the purposes of the grant, to submit full and complete annual reports on the manner in which the grant funds are spent and the progress made in accomplishing the purposes of the grant, to maintain records of receipts and expenditures, to make its books and records available to the grantor at reasonable times, and not to use any of the funds to carry on propaganda or otherwise attempt to influence legislation within the meaning of Code section 4945(d)(1), or to influence the outcome of any specific public election or to carry on directly or indirectly any voter registration drive within the meaning of Code section 4945(d)(2), or to make any grant which does not comply with the requirements of Code sections 4945(d)(3) or 4945(d)(4), or to undertake any activity for any purpose other than one specified in Code section 170(c)(2)(B). The agreement must also clearly specify the purposes of the grant. Such purposes may include contributing for capital endowment, provided that neither the grants nor the income therefrom may be used for purposes other than those described in Code section 170(c)(2)(B).

Section 53.4945-5(c)(2) of the regulations concerns capital endowment grants to exempt private foundations. The regulation provides that, if a private foundation makes a grant to another private foundation for endowment or for other capital purposes, the grantor private foundation must require reports from the grantee private foundation on the uses of the principal and the income (if any) from the grant funds. The grantee must make such reports annually for its tax year in which the grant was made and for its immediately succeeding two tax years. Only if it is reasonably apparent to the grantor that, before the end of such grantee's second succeeding tax year, neither the principal nor the income from the grant funds has been used for any purpose which would result in liability for tax under section 4945(d), may the grantor then allow the grantee's reports to be discontinued.

Section 53.4945-5(d)(1) of the regulations provides, in pertinent part, that to satisfy the report making requirements of section 4945(h)(3) of the Code, a granting foundation must provide the required information on its annual information return, required to be filed by section 6033, for each taxable year with respect to each grant made during the taxable year which is subject to the expenditure responsibility requirements of section 4945(h). Such information must also be provided on such return with respect to each grant subject to such requirements upon which any amount or any report is outstanding at any time during the taxable year. However, with respect to any grant made for endowment or other capital purposes, the grantor must provide the required information only for any taxable year for which the grantor must require a report from the grantee under section 53.4945-5(d)(2). The requirements of this

subparagraph with respect to any grant may be satisfied by submission with the foundation's information return of a report received from the grantee if the information required by section 53-4945-5(d)(2) is contained in such report.

Section 53.4945-5(d)(2) of the regulations provides that the report required by this paragraph shall include the following information: (i) The name and address of the grantee; (ii) The date and amount of the grant; (iii) The purpose of the grant; (iv) The amounts expended by the grantee (based upon the most recent report received from the grantee); (v) Whether the grantee has diverted any portion of the funds (or the income therefrom in the case of an endowment grant) from the purpose of the grant (to the knowledge of the grantor); (vi) The dates of any reports received from the grantee; (vii) The date and results of any verification of the grantee's reports undertaken pursuant to and to the extent required under paragraph (c)(1) of this section by the grantor or by others at the direction of the grantor.

Section 53.4946-1(a)(8) of the regulations provides that, for purposes of section 4941 only, the term "disqualified person" shall not include any organization which is described in section 501(c)(3) (other than an organization described in section 509(a)(4)).

Discussion:

B proposes to transfer all of its assets to A pursuant to a merger, wherein A will be the surviving private foundation. A is a domestic organization described in section 501(c)(3) of the Code. Accordingly, the proposed transfer is described in section 507(b)(2) and will not be subject to tax under section 507(c). Since the proposed transfer is a section 507(b)(2) transfer, A will not be treated as a newly created organization and will possess the attributes of B. See sections 1.507-3(a)(1), (a)(2)(i), (3) and (4) of the regulations. Also, A will be treated as if it were B for purposes of Chapter 42 and sections 507 through 509 of the Code. See section 1.507-3(a)(9)(i) of the regulations. Since the proposed transfer is described in section 507(b)(2) of the Code, it will not adversely effect A's or B's exempt status under section 501(c)(3). Furthermore, B will not be required to file the annual information return under section 6033 for any taxable year following the taxable year in which the transfer occurred since it will have no legal or equitable title to any assets and will engage in no activity in the subsequent taxable years. See section 1.507-1(b)(9) and section 1.507-3(a)(9)(i) of the regulations.

Since the proposed transfer is a donation, it will not be treated as net investment income under section 4940(a) of the Code or sale or other distribution under section 4940(c)(4)(A) of the Code. The proposed transfer will not constitute an act of self-dealing within the meaning of section 4941 because the assets will be donated to a section 501(c)(3) organization and be used for exempt purposes within the meaning of section 501(c)(3). Since the transfer of the assets constitutes a distribution for charitable purposes within the meaning of section 501(c)(3), it will not constitute a jeopardizing investment within the meaning of section 4944. The proposed transfer will not constitute a taxable expenditure within the meaning of section 4945 where the assets are transferred to another private foundation pursuant to a section 507(b)(2) transfer. See section 4945(d)(4)(B) of the Code. B will not need to exercise

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expenditure responsibility with respect to the transfer. See section 1.507-3(a)(7) of the regulations.

Finally, as discussed previously, since the transfer is not subject to taxes imposed by sections 4941, 4942, 4944 and 4945, then it will not give rise to any taxes under Chapter 42. Since B has not given notice of termination of its private foundation status under section 507(a)(1) of the Code, B will not be subject to taxes imposed by section 507(c) merely as a result of this transfer.

Based on the foregoing, we conclude as follows:

1. The transfer of assets from B to A will not adversely affect either A's or B's exempt status under section 501(c)(3) of the Code;

2. The transfer of assets from B to A will be a transfer of assets described in section 507(b)(2) of the Code;

3. A will not be treated as a newly created organization pursuant to section 507(b)(2) and section 1.507-3(a)(1) of the regulations;

4. Pursuant to section 1.507-3(a)(1) of the regulations, A will be treated as possessing B's attributes and characteristics as described in section 1.507(a)(2)(i), (3) and (4) of the regulations;

5. The transfer of assets from B to A will not constitute a termination of B's status as a private foundation within the meaning of section 507(a)(1); B will incur no tax under section 507(c) of the Code when it terminates under section 507(a)(1) because it has no assets;

6. The transfer of assets to A will not cause either A or B to be subject to the tax imposed by section 507(c) since the proposed transfer is described in section 507(b)(2);

7. The transfer of assets from B to A will not give rise to any tax on investment under section 4940(a) and will not constitute a "sale or other distribution" within the meaning of section 4940(c)(4)(A) of the Code;

8. The transfer of the assets from B to A will not be an act of self-dealing under section 4941 of the Code, and, thus, will not give rise to the excise tax under this Code section;

9. The transfer of assets from B to A will not constitute a jeopardizing investment under section 4944 of the Code and, thus, will not give rise to an excise tax under this Code section;

10. The transfer of assets from B to A will not be taxable expenditure under section 4945(d) of the Code;

11. A will not be required to exercise expenditure responsibility under section 4945(h) of the Code and section 53.4945-5(d)(1) of the regulations;

12. The transfer of assets from B to A does not constitute a grant for endowment as described in section 53.4945-5(c)(2) of the regulations;

13. Pursuant to section 1.507-3(a)(9) of the regulations, A will be treated as if it were the transferor private foundation for purposes of Chapter 42 and sections 507 through 509 of the Code;

14. The transfer will not adversely affect A's or B's exempt status under section 501(c)(3) of the Code;

15. The transfer will not give rise to any taxes under Chapter 42 and section 507 of the Code;

16. B will not be required to the annual information returned required by section 6033 for any taxable year following the taxable year in which the proposed transfer occurs, provided it has no legal or equitable title to any assets and engages in no activity in the subsequent tax year.

This ruling is conditioned on the understanding that there will be no material change in the facts upon which it is based. Any changes that may have a bearing upon your tax status should be reported to the Ohio Tax Exempt and Governmental Entities (TE/GE) Customer Service Office. The mailing address is: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The telephone number there is (877) 829-5500 (a toll free number). Also, we express no opinion as to the tax consequences of the transactions under other provisions of the Code.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited by others as precedent. We are sending a copy of this ruling to the Ohio TE/GE Customer Service. Because this letter could help resolve any questions about your tax status, you should keep it with your permanent records.

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If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Robert C. Harper, Jr.

Robert C. Harper, Jr.
Manager, Exempt Organizations
Technical Group 3

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